

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT  
PANEL B**

**FILED**

IN RE:       RICKEY H. HICKS, Respondent  
              Arkansas Bar ID#89235  
              CPC Docket No. 2009-096

**FEB 02 2010**

**LESLIE W. STEEN  
CLERK**

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Ned Johnson in an Affidavit dated September 3, 2009. The information related to the representation of Mr. Johnson by Respondent beginning in February 2008.

On or about September 17, 2009, Respondent was served with a formal complaint, supported by affidavit from Mr. Johnson. Respondent timely filed a response to the formal complaint and the matter proceeded to ballot vote before Panel B of the Committee pursuant to the Arkansas Supreme Court Procedures Regulating the Professional Conduct of Attorneys at Law.

During February 2008, Mr. Johnson hired Rickey Hicks, an attorney whose primary office is physically located in Pulaski County, Arkansas, to represent him in a legal matter involving certain real property issues. Mr. Hicks entered into a written fee contract with Mr. Johnson which allowed for him to receive thirty percent (30%) of what he could retain in damages against any party. Further, Mr. Johnson was required to pay a "retainer fee" (which also covered expenses or costs) in the amount of \$6,000. Mr. Johnson paid the \$6,000 to Mr. Hicks. Although it was a retainer for work not yet accomplished or undertaken and for costs associated with any actions to be taken, Mr. Hicks admittedly did not place the client's \$6,000 in his IOLTA

trust account. Mr. Hicks advised that he did not deposit the \$6000 in his account because he did not consider the funds to be those of his client but were his funds. Mr. Hicks continued by explaining that "it is not the general practice of lawyers in Arkansas to deposit a retainer fee into their Trust Account."

After Mr. Johnson paid the \$6,000 retainer on February 6, 2008, there was little communication. Mr. Hicks blamed this on Mr. Johnson not calling his cell phone. Mr. Hicks asserted that it is untrue that there was little communication. He also denied blaming any lack of communication on Mr. Johnson for not phoning his cell phone. Mr. Johnson's assertions are that he did contact Mr. Hicks on several occasions by cell phone and also via e-mail. Mr. Hicks initiated no communication with Mr. Johnson. Mr. Johnson made the phone calls and requested information, only to be provided vague information and never any documentation to demonstrate work being performed on his behalf. Mr. Hicks advised Mr. Johnson on numerous occasions that he had written to St. Paul Insurance Company about seeking liability insurance information. However, when requested to provide this letter, Mr. Hicks was unable to do so, but instead provided an e-mail from an assistant to Richard Mays setting out that there was only a "cc" to St. Paul Insurance Company on a letter sent to Cox and Associates.

Several months after being hired, Mr. Johnson requested that Mr. Hicks refund his retainer fee because there was never any information provided to him which demonstrated Mr. Hicks was actually working toward seeking a remedy for him. On or after February 17, 2009, Mr. Hicks advised Mr. Johnson that he would refund the unused portion of the retainer fee. At no time did Mr. Hicks provide Mr. Johnson with a billing statement. Mr. Hicks did provide one to the Office of Professional Conduct when requested. The time totaled on that billing statement

is 17.5 hours. If that time was accurate, then Mr. Hicks owed Mr. Johnson a refund of some portion of the retainer fee unless he was charging Mr. Johnson an hourly rate of \$342.86. There is no "hourly rate" stated in the fee contract.

According to Mr. Hicks, the reason Mr. Johnson requested the refund was because after Mr. Hicks had communicated with him on several occasions, over several months, Mr. Johnson realized he was not going to recover for the lack of liability insurance. Mr. Hicks provided, with his Response to the formal complaint, a cashier's check made payable to Mr. Johnson in the amount of \$2500.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, other matters before it, and the Arkansas Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Hicks' conduct violated Rule 1.2(a), because he did not pursue the objectives of his client, Ned Johnson, in actively pursuing available remedies for him in a timely and diligent fashion with regard to the legal matter he hired Mr. Hicks to pursue in February 2008. Rule 1.2(a) requires, in pertinent part, that subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.

2. That Mr. Hicks' conduct violated Rule 1.3, because his conduct with regard to Mr. Johnson's legal matter was neither diligent nor prompt after he was entrusted with the matter on Mr. Johnson's behalf in February 2008. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Mr. Hicks' conduct violated Rule 1.4(a)(3), because during the year Mr.

Hicks represented Mr. Johnson in the land development matter, he failed to keep Mr. Johnson reasonably informed of the actions, if any, Mr. Hicks undertook on his behalf. Rule 1.4(a)(3) requires that a lawyer keep the client reasonably informed about the status of the matter.

4. That Mr. Hicks' conduct violated Rule 1.4(a)(4), because during the year Mr. Hicks represented Mr. Johnson in the land development matter, he failed to promptly reply to Mr. Johnson with information about the matter with which Mr. Hicks had been entrusted. Many messages and e-mails were sent to Mr. Hicks with no prompt response, and on occasion, no response at all. Rule 1.4(a)(4) requires that a lawyer promptly comply with reasonable requests for information.

5. That Mr. Hicks' conduct violated Rule 1.5(b), because although Mr. Hicks had never represented Mr. Johnson in the past, he failed to explain what his hourly rate, if any, would be with regard to earning the \$6,000 advanced retainer paid in February 2008. There is no hourly rate in the contract nor was an hourly rate ever explained to Mr. Johnson. Rule 1.5(b) requires that the scope of the representation and the basis or the rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate.

6. That Mr. Hicks' conduct violated Rule 1.5(c), because the contingent fee contract with Mr. Johnson does not set out whether the \$6,000 retainer fee will be deducted from any recovery made on his behalf before Mr. Hicks' contingent fee is calculated. Rule 1.5(c) requires, in pertinent part, that a contingent fee agreement be in writing and state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in

the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated.

7. That Mr. Hicks' conduct violated Rule 1.15(a)(1), because upon receipt of the \$6,000 retainer from Mr. Johnson, which was for services to be rendered in the future and also any costs and expenses associated with the representation, Mr. Hicks failed to place the funds in his IOLTA trust account. Mr. Johnson's funds were not kept separate in a trust account. Rule 1.15(a)(1) requires that a lawyer hold property of clients or third persons, including prospective clients, that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.

8. That Mr. Hicks' conduct violated Rule 1.15(b)(2) when he failed to deposit the \$6,000 advanced payment of fee made to him by Mr. Johnson in February 2008, in his IOLTA trust account. Rule 1.15(b)(2) requires that a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

9. That Mr. Hicks' conduct violated Rule 1.16(d) because after Mr. Johnson terminated Mr. Hicks' representation of him, Mr. Hicks failed to surrender papers and property, i.e. the contents of the file maintained on his behalf in the representation, due to Mr. Johnson and Mr. Hicks failed to refund the advance payment of fee and expense that was not earned or incurred to Mr. Johnson. Rule 1.16(d) requires that upon termination of representation, a lawyer take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering

papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that the Arkansas law license of RICKEY H. HICKS, Arkansas Bar ID#89235, be, and hereby is, SUSPENDED FOR A PERIOD OF ONE MONTH for his conduct in this matter. The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. Pursuant to Section 18.B. of the Procedures, the Committee imposes a fine of \$1,000. Mr. Hicks is also ordered to pay costs in the amount of \$50 pursuant to Section 18.A of the Procedures. Mr. Hicks is ordered to pay restitution for the benefit of Mr. Johnson in the amount of \$5,000 (of which he has already forwarded \$2,500) pursuant to Section 18.C. of the Procedures. The fine, remaining restitution balance and costs assessed herein, totaling \$3,550, shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE  
ON PROFESSIONAL CONDUCT - PANEL B

By: Valerie Kelly  
Valerie Kelly, Chair, Panel B

Date: December 16, 2009